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12
13 **UNITED STATES DISTRICT COURT**
14 **NORTHERN DISTRICT OF CALIFORNIA**

15
16 KIMBERLY SCHUMAN and KYLE
17 KELLEY, *on behalf of themselves and those*
similarly situated,

18 Plaintiffs,

19 v.

20
21 ENERGIZER HOLDINGS, INC.; and
22 WAL-MART, INC.,

23 Defendants.

24 Case No.

25
26 **CLASS ACTION COMPLAINT**
27
28 **JURY TRIAL DEMANDED**

1 Plaintiffs Kimberly Schuman and Kyle Kelley, on behalf of themselves and all
 2 others similarly situated, bring this action against Energizer Holdings, Inc. (Energizer)
 3 and Wal-Mart, Inc. (Walmart) for violating federal and California antitrust and consumer
 4 protection laws.

5 Plaintiffs' claims stem from agreements between Energizer, the largest
 6 manufacturer of disposable batteries sold in the U.S., and Walmart, the largest retailer of
 7 disposable batteries in the U.S., to inflate wholesale and retail prices for disposable
 8 batteries and disposable-battery-dominated lighting products (together "Battery
 9 Products") above competitive levels.

10 **I. INTRODUCTION**

11 1. Faced with a dismal market outlook for disposable batteries, Energizer and
 12 Walmart, its largest customer, agreed to a scheme (the "Scheme") to slow price decline
 13 and ensure that both companies could charge higher-than-competitive prices for Battery
 14 Products.

15 2. The Scheme had two components to which Energizer agreed under
 16 pressure from Walmart.

17 3. First, Energizer agreed to inflate its wholesale prices above competitive
 18 levels for Energizer Battery Products to its wholesale customers other than Walmart.
 19 Energizer's wholesale customers purchase Energizer Battery Products at wholesale, and
 20 compete with Walmart in selling those products at retail. The resulting wholesale price
 21 inflation enabled Walmart to elevate its retail prices for Battery Products above
 22 competitive levels, and forced Walmart's competitors to charge higher prices at retail
 23 than they otherwise would have.

24 4. Second, Energizer agreed to provide Walmart *additional* protection from
 25 price competition. Energizer agreed not only to inflate its wholesale prices for Battery
 26 Products, but also to require its wholesale customers to charge their retail customers no
 27 less than the price Walmart charged for Energizer Battery Products, even if Walmart
 28 prices were well above Energizer's wholesale prices.

1 5. In furtherance of the second component of the Scheme, Energizer created a
 2 team known internally as Project Atlas. Project Atlas policed Energizer's customers' retail
 3 prices and warned retailers that tried to undersell Walmart on Energizer Battery Products
 4 that they had to match or exceed Walmart's prices. If Energizer's wholesale customers
 5 nevertheless charged lower prices than Walmart, Energizer would further inflate the
 6 wholesale prices it charged to those customers until it was no longer economically
 7 feasible for them to compete with Walmart.

8 6. These two components – Energizer's agreement with Walmart (1) to inflate
 9 its wholesale prices for its Battery Products to Walmart's competitors and (2) to prevent
 10 its wholesale customers from charging retail prices below Walmart's – formed the
 11 Scheme.

12 7. The Scheme was facilitated by Energizer's power in the market for
 13 disposable batteries – over 50% – and its duopolistic power with Duracell – together they
 14 control about 85% of the market. In a duopolistic market, a price increase by the market
 15 actor with the greatest market share – here, Energizer – will often be met by a comparable
 16 price increase by the market actor with the next greatest market share – here, Duracell –
 17 particularly if a dominant retailer – Walmart – limits Duracell's ability to gain market
 18 share by competing on price.

19 8. The Scheme artificially inflated Energizer's and Duracell's prices. Walmart
 20 is a huge, national retail outlet for Battery Products. To support the Scheme, Walmart
 21 offered Duracell Battery Products at prices that would not undermine its inflated prices
 22 for Energizer Battery Products. That deprived Duracell of a crucial opportunity to
 23 compete with Energizer for market share based on price. The Scheme thus decreased
 24 Duracell's incentive to compete with Energizer on price and increased Duracell's
 25 incentive to match Energizer's inflated prices. The result was that Energizer's and
 26 Duracell's wholesale prices were higher than they would have been without the Scheme.

27 9. The Scheme benefited Energizer, enabling it to charge higher prices than it
 28 otherwise would have.

10. The Scheme caused direct purchasers of Energizer and Duracell Battery Products from Walmart, like Plaintiffs Schuman and Kelley, to pay higher prices than they otherwise would have.

11. Plaintiffs bring suit on behalf of themselves, and on behalf of national and California classes of direct purchasers to recover treble the overcharges they paid to Walmart and to enjoin Defendants' unlawful conduct.

II. THE PARTIES

12. Plaintiff Kimberly Schuman purchased Energizer and Duracell Battery Products from a Walmart brick-and-mortar store during the Relevant Time Period, including on or around December 2022. Plaintiff Schuman did not use the Walmart Plus Program when making her purchase. Plaintiff Schuman is a resident of Windsor, California.

13. Plaintiff Kyle Kelley purchased Energizer Battery Products from a Walmart brick-and-mortar store during the Relevant Time Period, including on or around February 2022. Plaintiff Kelley did not use the Walmart Plus Program when making his purchase. Plaintiff Kelley is a resident of Fremont, California.

14. Defendant Energizer Holdings, Inc. ("Energizer") is a leading manufacturer of disposable batteries based in St. Louis, Missouri.

15. Defendant Wal-Mart Inc. ("Walmart") is the largest company in the world by revenue and operates thousands of retail stores in the United States. Walmart is headquartered in Bentonville, Arkansas. Walmart's Corporate eCommerce division is headquartered in San Bruno, California.

III. JURISDICTION AND VENUE

16. This action asserts claims under the Sherman Act, 15 U.S.C. §§ 1, 3, California's Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 *et seq.*, and Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et seq.*

17. Venue is appropriate in this District under 28 U.S.C. § 1391 because the claims alleged in this action accrued in California, and Defendants regularly transact

1 business in California, have maintained business offices in California, have directed their
 2 conduct towards Ms. Schuman, Mr. Kelley, and other direct purchasers in California,
 3 and reside in this District.

4 18. Each Defendant has transacted business, maintained substantial contacts,
 5 or committed overt acts in furtherance of the Scheme throughout California. The Scheme
 6 has been directed at persons and businesses residing in, located in, and doing business
 7 throughout California and the United States.

8 IV. DIVISIONAL ASSIGNMENT

9 19. Assignment is proper to the San Francisco or Oakland Division of this
 10 District under Local Rule 3-2(c)-(e) because Plaintiff Kimberly Schuman resides and
 11 purchases Energizer and Duracell Battery Products in Sonoma County, California, and
 12 Plaintiff Kyle Kelley resides and purchases Energizer Battery Products in Alameda
 13 County, California. Moreover, a substantial part of the events giving rise to Plaintiffs'
 14 claims occurred in San Mateo County. Walmart's Global eCommerce division is located
 15 in San Mateo County. A central part of the Scheme involved eliminating price disruption
 16 to Walmart's Global eCommerce platform, and Plaintiffs will likely have evidentiary
 17 support after a reasonable opportunity for further investigation or discovery to show that
 18 much of the challenged conduct involved Walmart representatives working out of the
 19 Global eCommerce division in San Bruno, California. Under Local Rule 3-2(d), "all civil
 20 actions that arise in the counties of ...Alameda... San Mateo, or Sonoma shall be assigned
 21 to the San Francisco Division or the Oakland Division."

22 V. FACTUAL BACKGROUND

23 A. The Disposable Battery Market

24 20. Disposable batteries are single-use power sources and are typically
 25 powered by alkaline or lithium. Disposable batteries come in standard sizes (e.g., AA,
 26 AAA, or 123), defined according to standards adopted by the American National
 27 Standards Institute or International Electrotechnical Commission. Disposable batteries
 28 are used in toys, flashlights, remote controls, smoke detectors, and some power tools.

1 Disposable batteries are mature products that have seen little innovation in the last ten
2 years or more.

3 21. The disposable batteries industry is characterized by high barriers to entry.
4 Many disposable batteries contain cobalt, lithium and graphite that are considered critical
5 minerals—minerals with a high supply risk potential and for which there are no easy
6 substitutes—by the United States Geological Survey.

7 22. Safety concerns and regulations impose additional barriers to entry.
8 Disposable batteries are manufactured using metals such as mercury, lead, cadmium, and
9 nickel. Lead and mercury are hazardous materials, and waste from battery
10 manufacturing creates costly environmental contamination problems.

11 23. Advertising is another barrier to entry for new entrants into established
12 markets like the disposable battery market. Energizer has invested hundreds of millions
13 of dollars in advertising to build its brand. Energizer spends an estimated \$70-80 million
14 a year in advertising, principally to distinguish itself from Duracell, its chief rival.
15 Energizer and Duracell together account for about 85% percent of total U.S. disposable
16 battery sales, and Energizer by itself accounts for over 50% of those sales. Each company
17 has market power.

18 24. The recent market outlook for disposable batteries has been bleak. The
19 conventional wisdom is that with advances in technology, and the rising popularity of
20 smartphones, videogames, and online games, alkaline battery use will increasingly be
21 limited to flashlights, smoke alarms, and a few other low-tech applications.

22 25. High technology and advanced circuitry also increasingly produce smaller
23 consumer devices that are powered with rechargeable or renewable power sources,
24 further limiting disposable battery use.

25 26. Consumer demand for disposable batteries has also been dampened by
26 environmental concerns. Many consumers prefer rechargeable batteries to protect the
27 environment, and scientific studies have concluded that the use of rechargeable batteries
28

1 should be encouraged for high consumption devices such as cameras, flashlights, and
2 electronic toys.

3 27. Disposable batteries thus face a declining market outlook and have long
4 been predicted to lose sales to renewable batteries or to be displaced by new technology
5 in devices that do not require batteries to operate. According to a news report, "These
6 trends—lower power consumption, better and cheaper rechargeables, new power
7 sources—are squeezing what used to be a lucrative market. Remote controls for
8 televisions, for example, used to be powered by batteries. Now they can be an app on a
9 mobile phone."

B. Walmart's dominance in the retail market makes it a critical relationship for battery suppliers.

12 28. At the retail level for Battery Products, there is a single dominant firm,
13 Walmart.

14 29. Walmart is the only retailer that is large enough for Energizer to reference
15 in its annual SEC filings: "Although a large percentage of our sales are attributable to a
16 relatively small number of retail customers, in fiscal year 2020, only Wal-Mart Stores, Inc.
17 accounted for ten percent or more (14.1%) of the Company's annual sales."

30. Walmart has historically been a large part of Energizer's revenues.

19 31. In 2013, Energizer lost an exclusive contract with Walmart to supply
20 batteries to Walmart's discount chain, Sam's Club.

32. The effect that losing the contract had on Energizer's sales illustrates
22 Walmart's dominance as a retailer and its importance to Energizer as a client.

23 33. As the below table illustrates, the year before losing the contract, Walmart
24 purchases constituted 20% of Energizer's overall sales. Just one year later, that percentage
25 dropped to 13.3%, and the next, to 8.5%.

Fiscal Year	% Sales to Walmart
2012	20.0
2013	13.3
2014	8.5
2015	10.0
2016	10.4
2017	12.1
2018	11.5
2019	13.8
2020	14.1
2021	13.7

34. The drops in sales to Walmart had corresponding effects on Energizer's bottom line: Energizer missed earnings and profit estimates in 2014 and 2015, and its share price suffered.

15. **C. Energizer and Walmart agree to the Scheme.**

16. As early as January 2018, Walmart and Energizer again agreed to a deal that would give Energizer products preferential treatment in Walmart stores, and the trend reversed. As illustrated above, after going as low as 8.5%, Energizer's Walmart sales rebounded to around 14% of all Energizer sales starting in 2019.

20. Walmart and Energizer's agreement extended beyond Walmart giving Energizer Battery Products preferential treatment at its stores. Under pressure from Walmart, Energizer agreed to the Scheme, which shielded Walmart from price competition from other retail sellers of Energizer Battery Products and allowed both Walmart and Energizer to charge supracompetitive prices.

25. The Scheme had two components. First, Energizer agreed with Walmart to artificially inflate the wholesale prices it charged to Walmart's competitors for Energizer Battery Products to prevent them from undercutting Walmart's retail prices. Second, Energizer agreed with Walmart to monitor Walmart's competitors to ensure that they did

1 not charge lower retail prices for Energizer Battery Products than Walmart—and to
 2 discipline those that did.

3 38. Energizer created a group called Project Atlas to fulfill its obligations to
 4 Walmart under the agreement. Project Atlas policed Energizer's customers' retail prices
 5 and raised wholesale prices as necessary to force Energizer's customers to maintain retail
 6 prices that did not undercut Walmart's.

7 **D. Energizer and Walmart implement the Scheme.**

8 39. The Scheme has been in effect from as early as January 2018 and continues
 9 to the present (the "Relevant Time Period").

10 40. By April 2018, Energizer had increased its prices by over 8% from the prior
 11 year.

12 41. That same year, at Walmart's behest, Energizer's Project Atlas policed
 13 Walmart's competitors' retail prices for Energizer Battery Products and disciplined those
 14 competitors for underselling Walmart, in furtherance of the Scheme.

15 42. One such Walmart competitor was Portable Power, Inc., which sells
 16 batteries from its offices in San Fernando, California. Portable Power bought Battery
 17 Products at wholesale from Energizer and sold them at retail in competition with
 18 Walmart.

19 43. In November 2018, Project Atlas disciplined Portable Power for its pricing
 20 of Energizer headlamps, a Battery Product sold by Walmart and, at that time, Portable
 21 Power.

22 44. Acting on complaints from Walmart, Energizer raised its wholesale prices
 23 for headlamps to Portable Power to force it to raise its retail prices to match or exceed
 24 Walmart's.

25 45. As explained in an internal email sent by Energizer manager Jeffrey Stoll,
 26 Energizer had received complaints from Walmart regarding "disruptive pricing on
 27
 28

1 Amazon & Wal-Mart.com on headlights and specialty batteries.”¹ Walmart asked
 2 Energizer what it was doing to “resolve” the issue.

3 46. Mr. Stoll mentioned Portable Power by name as a driver of the “disruptive
 4 pricing.”

5 47. Mr. Stoll’s email highlighted Portable Power as selling at “disruptive”
 6 prices—i.e., lower and more competitive prices—and noted the link between reining in
 7 Portable Power’s retail pricing and Energizer’s efforts to maintain high prices across retail
 8 distribution channels.

9 48. Energizer recognized the disruption that Walmart competitors such as
 10 Portable Power would have on Walmart’s business and sales of Energizer Battery
 11 Products generally. Raising prices to Portable Power and other Walmart competitors
 12 would have the effect of diminishing competition in the retail market—to the benefit of
 13 Walmart. Energizer understood that raising its wholesale prices to Portable Power and
 14 other Walmart competitors would increase retail prices.

15 49. Energizer explained that, with headlamps as well as other Battery Products:

16 [W]e are selling to Portable Power, Inc. at [wholesale] pricing that would
 17 allow them to be disruptive on e-commerce. Anything we can do to
 18 influence pricing with Portable Power will be key to reducing the
 disruption in the [North American] market.

19 50. To bring Portable Power’s retail pricing up to the level of Walmart’s,
 20 Energizer raised its wholesale prices to Portable Power for headlamps by about 50-85%
 21 for certain models, as illustrated by the below spreadsheet Energizer sent to Portable
 22 Power in November 2018:

HDA32E.1 NA VISION HEADLIGHT	98165982	E300276500	10/01/18	09/30/19	\$5.00	\$7.68	\$2.68	Increase	
HDB32E.1 NA VISION HD HEADLIGHT	98165982	E300276800	10/01/18	09/30/19	\$6.00	\$9.84	\$3.84	Increase	
HDBIN32E.1 NA VISION HD IND HEADLGT	98165982	E300423100	10/01/18	09/30/19	\$6.00	\$9.84	\$3.84	Increase	
HDC32E.1 NA VISION HD+ HEADLIGHT	98165982	E300277100	10/01/18	09/30/19	\$7.00	\$13.02	\$6.02	Increase	
HDD32E.1 NA VISION HD+ FOCUS HEADLIG	98165982	E300277400	10/01/18	09/30/19	\$8.00	\$15.02	\$7.02	Increase	
HDDIN32E.1 VISION HD+FOCUS IND HDL	98165982	E300423200	10/01/18	09/30/19	\$8.00	\$15.02	\$7.02	Increase	

27
 28 ¹ Wal-Mart.com, like Amazon, is a marketplace that allows third-party retailers to sell
 products.

1 51. At that time—November 2018—Energizer’s Stephanie Rice, a sales
 2 representative that worked with Portable Power, told Portable Power’s CEO that
 3 Energizer was raising Portable Power’s prices to align them with Energizer pricing
 4 policy. Energizer did not tell Portable Power that the price increases Energizer was
 5 imposing were because of the Scheme. (See below, IX.B., for allegations of fraudulent
 6 concealment.)

7 52. This policy was new to Portable Power, which had purchased Battery
 8 Products from Energizer for years, and represented a change in Energizer’s pricing
 9 policy.

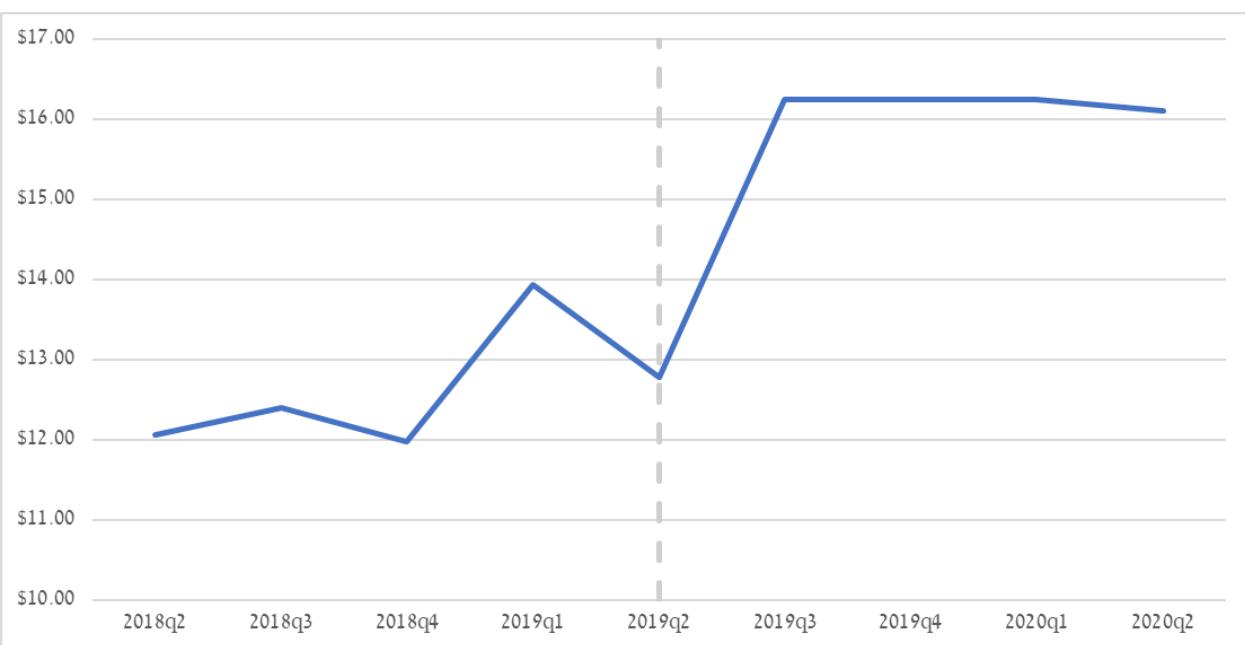
10 53. Energizer also began rolling out widespread wholesale price increases to
 11 Walmart’s competitors in accordance with the Scheme.

12 54. For example, in the second quarter of 2019, Energizer announced an 8%
 13 price increase for its Energizer® Max Alkaline Batteries and Energizer® Ultimate Lithium
 14 Batteries.

15 55. This announced wholesale price increase enabled Walmart to increase its
 16 prices for these batteries by an even greater margin: nearly 20% in the third quarter of
 17 2019, and by nearly 40% by the first quarter of 2020.

18 56. For example, in May 2019, the month before the price increase was
 19 announced, Walmart priced a 24-pack of Energizer Max Alkaline AAA batteries at \$12.78.
 20 By July 2019, just two months later, Walmart had raised the price to \$16.24, a 27-percent
 21 increase. This price change was non-transitory; the average price of this product in the 12
 22 months before the wholesale price increases was \$12.71, and the average price in the 12
 23 months after the wholesale price increases was \$16.18. Figure 1 shows the quarterly retail
 24 prices.

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1 FIGURE 1: ENERGIZER MAX ALKALINE AAA 24 PACK WALMART RETAIL PRICE
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13 57. Energizer continued to impose similar price hikes at regular intervals in
14 2020 and 2021.

15 58. In September and October 2020, Energizer raised prices across its product
16 lines by at least 10%; in April 2021, Energizer raised prices on its MAX line of batteries by
17 at least 10%; and in June 2021, Energizer raised prices across its household battery
18 portfolio by 11%.

19 59. Energizer implemented its price increases because of its agreement with
20 Walmart and at Walmart's behest.

21 60. Energizer understood that raising its wholesale prices to its wholesale
22 customers would, in turn, increase the retail prices those customers charged at retail.
23 These price increases were intended to force retailers competing with Walmart in selling
24 Energizer Battery Products to increase their retail prices up to or above Walmart's.

25 61. In January 2021, Energizer again targeted Portable Power for underselling
26 Walmart.

27 62. Ms. Rice forwarded an email from Energizer's Project Atlas team to
28 Portable Power's CEO that informed him that Portable Power was among the top-ten

1 Amazon sellers “in violation” of Energizer’s “pricing policies”—i.e., that Portable
 2 Power’s retail prices were below the price floor Energizer had set with Walmart—for
 3 December 2020.

4 63. The email included the following chart reflecting the “top ten” violators on
 5 Amazon (which refers to Portable Power under the name “HB Wholesale”):

Top Amazon Sellers in Violation for December 2020								
#	SELLER	STATUS	VIOLATIONS	AVG %	ALEXA	RATINGS	LAST ACTION	DATE
1	amazon.com	Authorized [amazon	274	-13.6%	10	N/A	New	---
2	bestdealsupply.com	Unauthorized Indire	127	-19.0%	NA	N/A	Escalated Enforcement - New	08/01/20
3	MYBATTERYSUPPLIER [Amazon US]	Unauthorized Indire	109	-11.6%	NA	379910	Escalated Enforcement - New	08/01/20
4	National Deals [Amazon US]	Unauthorized Indire	68	-22.1%	NA	85184	Letter Sent - New	12/15/20
5	Another Day in ParadisePCB [Amazon US]	Unauthorized Indire	34	-12.8%	NA	2294	New	---
6	Tzohar Inc [Amazon US]	Unauthorized Indire	31	-15.9%	NA	1257	Letter Sent - New	11/20/20
7	Quiverr [Amazon US]	Authorized	17	-24.6%	NA	85647	New	---
8	JustCalculators [Amazon US]	Unauthorized Indire	14	-39.8%	NA	46232	Letter Sent - New	10/20/20
9	718 Sold It [Amazon US]	Unauthorized Indire	14	-7.6%	NA	6347	Letter Sent - New	12/14/20
10	HB Wholesale [Amazon US]	Unauthorized Direct	10	-26.5%	NA	48175	New	---

16 64. The chart shows that Energizer’s Project Atlas had a system in place to
 17 monitor and discipline its wholesale customers: it sent letters, escalated enforcement, and
 18 as Portable Power’s experience illustrates, subjected noncompliant sellers to repeated
 19 price increases.

20 65. An internal email communication from Energizer’s Colby Mowery, a
 21 member of Energizer’s trade and price strategy team, to Energizer manager Brad
 22 Sellenriek attaching the top-ten list confirmed that Energizer’s Project Atlas had
 23 contacted Portable Power because of Energizer’s agreement with Walmart.

24 66. Mr. Sellenriek forwarded the message to Ms. Rice and clarified that Portable
 25 Power was being asked to raise its retail prices:

27 28 Stephanie- Please see the latest situation on [Portable Power]. Before we
 shut them off on these [products], let’s see if he’s willing [to] revise his
 pricing and get him off the radar.

1 67. Following these messages, in January 2021, Energizer increased various
 2 wholesale prices to Portable Power for Energizer Battery Products, in accordance with
 3 its agreement with Walmart. Energizer also told Portable Power the minimum price it
 4 had to charge—Walmart’s price—to avoid being terminated as a distributor.

5 68. Energizer repeatedly warned Portable Power that if it did not increase its
 6 retail prices to match or exceed Walmart’s, it would be cut off from purchasing Battery
 7 Products from Energizer.

8 69. On or about February 1, 2021, Ms. Rice warned Portable Power that,
 9 because Portable Power had not raised its retail prices to match Walmart’s, Energizer
 10 would stop shipping certain Energizer Battery Products to Portable Power. When
 11 Portable Power’s CEO discussed Energizer’s decision with Ms. Rice later that day, she
 12 admitted that Energizer had adjusted its pricing policies at Walmart’s request, telling
 13 him, “This is 1000% about Walmart and wanting the best price.”

14 70. According to Ms. Rice, Energizer inflated its wholesale prices for Energizer
 15 Battery Products to Portable Power and other wholesalers to force them to sell at or above
 16 Walmart’s retail prices.

17 71. Later that month, Energizer again quoted wholesale prices to Portable
 18 Power that were based on Walmart’s prices, this time for Ray-O-Vac hearing aid
 19 batteries. Ms. Rice again said that Energizer was requiring Portable Power to match a
 20 floor created by Walmart’s price for these products. In an email message dated
 21 February 16, 2021, she offered Portable Power a wholesale price that would allow it a
 22 20% mark up if it matched Walmart’s retail price: “If the items are priced to match the
 23 Walmart selling price minus 20% would that work for you?” Her email included the
 24 following chart:

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Rayovac Part	Description	List	Case Qty	Matrix cost	Walmart selling price	Seller	20%	Walmart selling price minus 20%
10-16	RAYOVAC RETAIL SIZE 10 16PK		24	\$8.80	\$10.81	Walmart direct	\$2.16	\$8.65
10-24	RAYOVAC RETAIL SIZE 10 24PK		24	\$12.72	\$18.76	Walmart direct	\$3.75	\$15.01
10-48	RAYOVAC RETAIL SIZE 10 48PK		6	\$24.48	\$29.75	Local Battery	\$5.95	\$23.80
10-8	RAYOVAC RETAIL SIZE 10 8PK		24	\$4.56	\$4.99	Walmart direct	\$1.00	\$3.99
13-16	RAYOVAC RETAIL SIZE 13 16PK		24	\$7.68	\$7.49	Walmart direct	\$1.50	\$5.99
13-24	RAYOVAC RETAIL SIZE 13 24PK		24	\$10.80	\$9.79	Walmart direct	\$1.96	\$7.83
13-48	RAYOVAC RETAIL SIZE 13 48PK		6	\$18.72	\$17.99	DZEE Suppliers	\$3.60	\$14.39
13-8	RAYOVAC RETAIL SIZE 13 8PK		24	\$3.76	\$6.87	Walmart direct	\$1.37	\$5.50
312-16	RAYOVAC RETAIL SIZE 312 16PK		24	\$7.68	\$7.49	Walmart direct	\$1.50	\$5.99
312-24	RAYOVAC RETAIL SIZE 312 24PK		24	\$11.04	\$9.79	Walmart direct	\$1.96	\$7.83
312-48	RAYOVAC RETAIL SIZE 312 48PK		6	\$21.12	\$16.89	Walmart direct	\$3.38	\$13.51
312-6	RAYOVAC RETAIL SIZE 312 6PK		24	\$3.12	\$5.87	Walmart direct	\$1.17	\$4.70
312-8	RAYOVAC RETAIL SIZE 312 8PK		24	\$4.00	\$6.87	Walmart direct	\$1.37	\$5.50
13-6	Not in bid tool	\$4.86			\$5.87	Walmart direct	\$1.17	\$4.70
13-32	Not in bid tool	\$18.88			\$16.97	Walmart direct	\$3.39	\$13.58

Need to add to bid tool
Need to add to bid tool

72. Ms. Rice was offering a wholesale price to Portable Power that was 20% below Walmart's retail price so that Portable Power could have a sufficient mark up if it set its retail prices at or above Walmart's retail prices.

18 **E. Market forces cannot explain Energizer's price increases.**

19. Energizer's price increases cannot be explained by other market forces. For example, the price of lithium was flat or declining for the periods before and after the announced price increases. The cost of the four other commodities that make up 90% of the inputs to disposable batteries—steel, graphite, manganese, and zinc—also do not explain Energizer's price increases.

24. Increased demand does not explain Energizer's wholesale price increases either. Energizer Battery Product prices, like disposable battery product prices generally, have been increasing in the last four or five years despite a *reduction* in demand because of competition from disruptive technologies, such as rechargeable batteries.

1 75. On April 17, 2018, the *Wall Street Journal* reported that price increases at
 2 both Energizer and Duracell – together controlling about 85% of the market for Alkaline
 3 batteries – were at odds with competitive market forces: “Batteries on average cost 8.2%
 4 more than a year ago, while prices in the overall household-care segment rose only 1.8%,
 5 according to Nielsen. At a time when prices are stagnating on everything from toilet
 6 paper to diapers, such pricing power for a product that is increasingly obsolete has
 7 confounded shoppers.”

8 76. Nor can the price increases be explained by general inflation. Inflation was
 9 under 2% when Energizer announced its 2019 and 2020 price increases, 2.6% in March
 10 2021 when Energizer announced its 10% price increase, and 5% in May 2021 when it
 11 announced its 11% price increase.

12 **F. The scheme benefited both Walmart and Energizer to the detriment of
 13 competition in the wholesale and retail markets for Battery Products.**

14 77. The Scheme benefited both Walmart and Energizer. First, Energizer agreed
 15 to inflate its wholesale prices to Walmart’s competitors. That enabled Energizer to enjoy
 16 inflated prices. It also enabled Walmart to artificially inflate its retail prices for Energizer
 17 Battery Products without being undercut by other retail sellers of Energizer Battery
 18 Products.

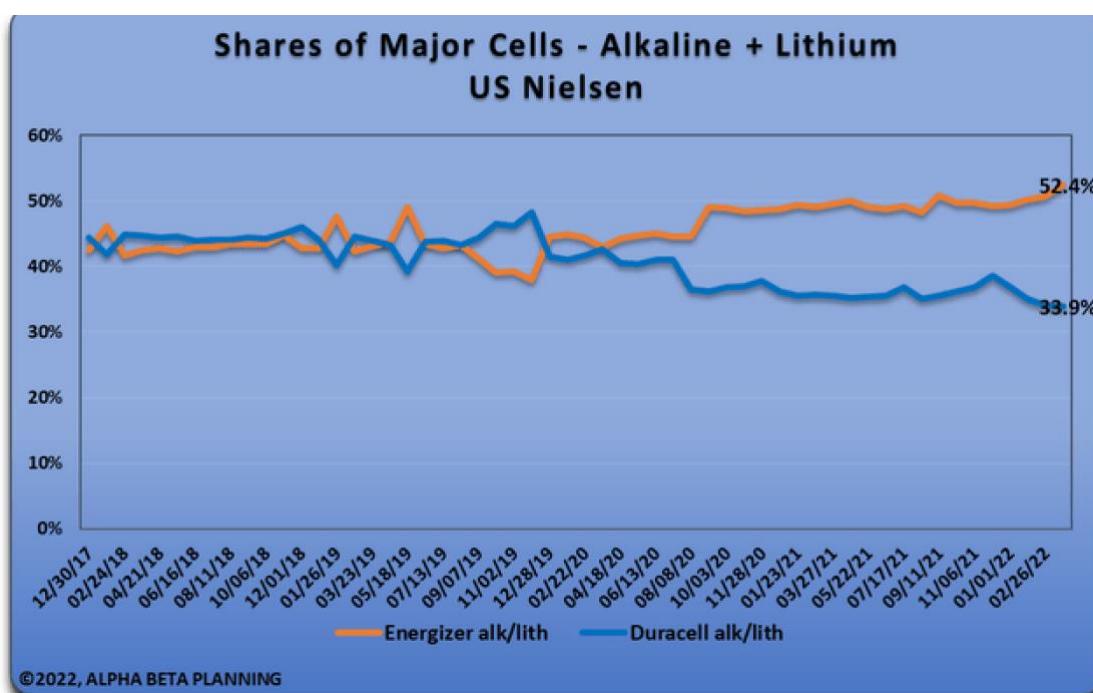
19 78. Second, Energizer agreed to prevent its wholesale customers from
 20 undercutting Walmart’s retail prices. Energizer further inflated its prices to retailers, like
 21 Portable Power, that chose to compete on price, ultimately driving them out of the market
 22 if they did not comply. That enabled Walmart to artificially inflate its prices by an
 23 additional increment.

24 79. The greatest potential threat to the Scheme was Duracell. It could have
 25 attempted to steal market share from Energizer through pricing. But Walmart deprived
 26 Duracell of the single largest opportunity to compete: Walmart stores. Walmart protected
 27 its own inflated prices for Energizer Battery Products by charging similarly inflated prices
 28 for Duracell Battery Products. That benefited Walmart. It also protected Energizer from

1 its greatest competitive threat. With Walmart stores unavailable for price competition,
2 Duracell had incentive to charge higher prices to its direct purchasers than it would have
3 charged in the absence of the Scheme.

4 80. In this way, the Scheme facilitated inflated duopolistic pricing and vice-
5 versa. On one hand, the anticompetitive agreement supported higher duopolistic prices
6 than Energizer and Duracell would have otherwise charged. The Scheme distorted
7 Duracell’s incentives, making it less attractive for Duracell to compete on price and more
8 attractive to match Energizer’s prices. On the other hand, the duopolistic Battery Products
9 market was particularly susceptible to the Scheme. Conspiracies to artificially inflate
10 prices are more likely to succeed and more stable in markets with small numbers of
11 dominant market players.

12 81. The graph below shows that Duracell has not, in fact, stolen market share
13 in response to the Scheme:



1 **G. The Scheme caused and continues to cause antitrust injury to direct**
 2 **purchasers from Walmart.**

3 82. The Scheme caused antitrust injury to Walmart's direct purchasers in the
 4 form of higher prices.

5 83. Energizer's policing of wholesale customers' prices pursuant to its
 6 agreement with Walmart had a market-wide effect of raising retail prices for Battery
 7 Products.

8 84. Energizer's policing also enabled Walmart to inflate its retail prices for
 9 Battery Products higher than they otherwise would have been, protecting Walmart from
 10 competition on price from other retail sellers of Battery Products.

11 85. Wholesale customers from Energizer, such as Portable Power, paid higher
 12 prices at wholesale for Energizer Battery Products than they otherwise would have,
 13 forcing them to charge higher prices at retail. That allowed Walmart to raise the prices it
 14 charged at retail. Then, Energizer's policing of its customers' retail prices allowed
 15 Walmart to charge even higher prices for Energizer and Duracell Battery Products than
 16 it would have without the Scheme, resulting in Plaintiff Schuman, Plaintiff Kelley, and
 17 other direct purchasers from Walmart paying artificially inflated prices.

18 **VI. MARKET POWER AND MARKET DEFINITION**

19 86. The relevant product market consists of the market for disposable battery
 20 products. There are no reasonable substitutes for disposable batteries for the vast
 21 majority of uses for which they are purchased. Rechargeable batteries are not reasonable
 22 substitutes for disposable batteries because they are much more expensive and do not
 23 hold a charge as long. This makes them an impractical choice for the types of applications
 24 for which disposable batteries are usually used, particularly applications that require low
 25 power output or infrequent power draws for a longer period of time than rechargeable
 26 batteries, such as for smoke alarms, children's toys, and remote controls.

1 87. The relevant geographic market consists of the United States, and its
 2 territories, possessions, and the Commonwealth of Puerto Rico (in conjunction with the
 3 relevant product market above, the "Relevant Market").

4 88. Energizer has substantial market share within the Relevant Market,
 5 controlling more than 50% of the market. Most of the rest of the market belongs to
 6 Duracell. Together with Duracell, Energizer has duopoly power, as explained above.

7 89. Energizer's power in the market for disposable battery products also gives
 8 it power over price—and hence market power—over disposable-battery dominated
 9 lighting products, such as headlamps and flashlights, because disposable batteries are
 10 their largest cost component.

11 90. Direct evidence establishes Defendants' combined power in the Relevant
 12 Market and over all Battery Products. That direct evidence includes Defendants' ability
 13 to profitably and sustainably inflate prices above competitive levels. It also includes: (1)
 14 Energizer's numerous large price increases since January 2018 that it implemented under
 15 its agreement with Walmart and that cannot be explained based on competitive forces;
 16 and (2) the decrease in the number of retail sellers that purchase Battery Products directly
 17 from Energizer even though the retail prices for those Products are inflated above
 18 competitive levels.

19 91. Defendants' conduct had a significant impact on prices for Energizer and
 20 Duracell Battery Products, and has inflated Energizer's, Duracell's, and Walmart's prices
 21 above competitive levels and driven distributors off the market. Reducing competition
 22 from retail sellers reduces price competition at the retail level.

23 92. As shown by Energizer's significant price inflation alleged herein, inter-
 24 brand competition did not restrain Energizer from inflating its prices. On the contrary,
 25 Energizer's agreement with Walmart reduced price competition between Energizer and
 26 Duracell by encouraging Duracell to follow Energizer's price increases and reducing
 27 Duracell's incentive to compete with Energizer on wholesale pricing. Walmart's
 28 agreement with Energizer made it easier for Duracell to observe Energizer's price

1 changes and prevented Duracell from competing with Energizer for market share by
2 lowering its prices to Walmart, as Walmart would not sell Duracell Battery Products at
3 prices that would undermine the effects of the Scheme.

4 93. During the Relevant Time Period, Energizer had market power in the
5 wholesale market for Battery Products because Energizer had the power to profitably
6 exclude competition and to inflate and maintain the prices for those products at
7 supracompetitive levels.

8 94. In January 2018, Energizer had around 40% of the U.S. market share for
9 disposable batteries. Its market share has since grown to above 50%. Energizer's market
10 power is enhanced by its agreement with the largest retailer in the United States,
11 Walmart.

12 95. The fact that Energizer was able to profitably inflate the prices of Energizer
13 Battery Products shows that there are no sufficiently reasonable substitutes, and therefore
14 that disposable battery products are a relevant market.

15 96. Walmart has a dominant position with respect to both other retail outlets
16 and manufacturers.

VII. ANTICOMPETITIVE EFFECTS

18 97. The Scheme caused Walmart's competitors to pay inflated wholesale prices
19 for Energizer Battery Products, impairing their ability to compete effectively with
20 Walmart in the retail market.

21 98. The Scheme enabled Walmart to charge higher prices for Energizer and
22 Duracell Battery Products to its direct purchasers than it would have charged without the
23 Scheme.

24 99. Defendants' Scheme increased Energizer's market power by reducing
25 competition between Energizer and Duracell, augmenting Duracell's incentive to match
26 Energizer's price increases, and reducing the risk that Energizer would lose market share
27 if it inflated its prices above competitive levels.

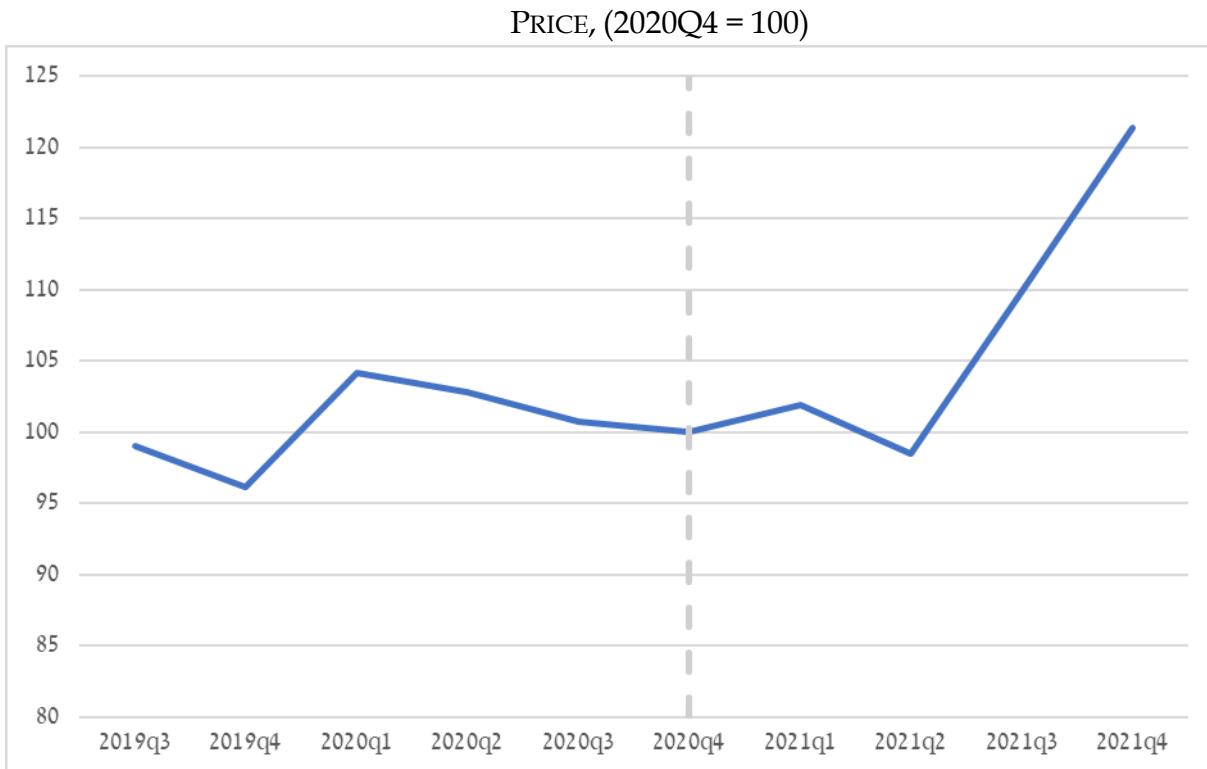
1 100. The Scheme enabled Energizer to implement a series of anticompetitive
2 wholesale price increases. The price increases started in 2018 and accelerated in 2020 and
3 2021. The wholesale prices Energizer charged direct purchasers increased by more than
4 30% since 2018, and the number of retail sellers of Energizer Battery Products in the
5 market decreased during that time.

6 101. The price increases identified above cannot be adequately explained by
7 general inflation in the economy or other competitive market forces.

8 102. The Scheme also reduced competition on the retail level by impairing
9 retailers, such as Portable Power, from gaining market share by offering retail prices for
10 Energizer Battery Products lower than Walmart's. As a result, the Scheme increased
11 Walmart's market power. Walmart used that market power to inflate prices above
12 competitive levels for Energizer and Duracell Battery Products. For example, Walmart
13 inflated and maintained its retail prices above competitive levels for alkaline and lithium
14 disposable batteries after Energizer inflated its wholesale price in June and July 2021, as
15 indicated in Figure 2:

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1 FIGURE 2: ENERGIZER ALKALINE AND LITHIUM PRODUCTS INDEXED WALMART RETAIL



15 **VIII. STATUTES OF LIMITATIONS DO NOT BAR PLAINTIFF'S CLAIMS**

16 **A. Continuing Violation**

17 103. During the Relevant Time Period, Defendants' Scheme was a continuing
 18 violation in which Defendants repeatedly invaded Plaintiff's and Class Members'
 19 interests by taking overt acts in furtherance of the Scheme.

20 104. Throughout the Relevant Time Period, Defendants discussed the Scheme,
 21 adjusted it to match new Walmart prices, agreed to new wholesale price increases, and
 22 repeatedly enforced their agreement against retailers who attempted to undercut
 23 Walmart's retail prices for Energizer Battery Products.

24 105. Throughout the Relevant Time Period, Defendants' Scheme repeatedly
 25 injured Plaintiffs and proposed Class members by causing them to pay overcharges each
 26 time they purchased Energizer and Duracell Battery Products.

28 **B. Fraudulent Concealment**

1 106. The statute of limitations is tolled because Defendants fraudulently
 2 concealed their Scheme.

3 107. Defendants actively concealed their Scheme by having Energizer offer
 4 pretextual justifications to Walmart's competitors when it raised their wholesale prices
 5 and forced them to raise their retail prices; in reality, Energizer was enforcing the terms
 6 of the Scheme.

7 108. One pretext Energizer used was that retailers selling at low prices were
 8 violating Energizer's pricing policies, including a "Minimum Advertised Price" or
 9 "MAP" policy.

10 109. A MAP policy is a unilateral policy a supplier enacts that prohibits retailers
 11 from advertising the supplier's products for sale below a specified, or minimum-
 12 advertised, price. Retailers that violate the MAP risk being cut off from making further
 13 purchases of the supplier's products.

14 110. As early as July 2019, Energizer's Stephanie Rice told retailer Portable
 15 Power's CEO that Energizer was enforcing a MAP policy and taking actions to cut off
 16 retailers that violated that policy.

17 111. But in September 2020, Portable Power's CEO received an internal
 18 Energizer email chain that revealed that Energizer did not actually have a MAP policy.
 19 In the email chain, an Energizer senior manager told an Energizer sales manager to
 20 enforce Energizer's MAP policy with Portable Power. The sales manager responded that
 21 it had been difficult to implement the MAP policy with other customers in the past,
 22 because Energizer did not consistently enforce any MAP policy. The senior manager then
 23 apologized for potentially being misleading and acknowledged that Energizer did not
 24 really have a formal MAP policy in place.

25 112. Later, in a phone conversation on or about February 1, 2021, Energizer's
 26 Stephanie Rice finally revealed to Portable Power's CEO that Energizer's pricing policies
 27 were not about a MAP policy or any other pretext, but were "1000% about Walmart," and
 28 that Energizer's Project Atlas was driving Energizer's wholesale prices and policing

1 Walmart's competitors' prices in accordance with the Scheme.

2 113. Plaintiffs did not have actual or constructive knowledge of the facts
 3 constituting their claim for relief before that February 1, 2021 phone conversation, and
 4 did not discover, and could not have discovered through the exercise of reasonable
 5 diligence, the existence of the Scheme until that time.

6 IX. CLASS ACTION ALLEGATIONS

7 114. Plaintiffs Kimberly Schuman and Kyle Kelley bring this action as a class
 8 action pursuant to Fed. R. Civ. P. 23 and seek certification of the following Classes:

9 115. Retail California Class:

10 *All persons who purchased Energizer or Duracell Battery Products directly from a
 11 Walmart brick-and-mortar store in California from January 1, 2018 until the
 12 anticompetitive effects of Defendants' challenged conduct cease, and who did not
 13 use the Walmart Plus Program when making their purchases*

14 116. Retail National Class:

15 *All persons who purchased Energizer or Duracell Battery Products, directly from
 16 a Walmart brick-and-mortar store in the United States from January 1, 2018 until
 17 the anticompetitive effects of Defendants' challenged conduct cease, and who did
 18 not use the Walmart Plus Program when making their purchases*

19 117. Excluded from the Classes are Defendants, their officers and directors, and
 20 members of their immediate families or their legal representatives, heirs, successors, or
 21 assigns and any entity in which Defendants have or had a controlling interest. Also
 22 excluded is the judge presiding over this matter, the judge's staff members, and the
 23 judge's and the judge's staff members' immediate families and their legal representatives,
 24 heirs, successors, or assigns.

25 118. **Numerosity.** The members of the Classes are so numerous that joinder of
 26 all members is impracticable. After a reasonable opportunity for further investigation or
 27 discovery, the evidence is likely to show that the Class members number in the hundreds
 28 or thousands.

1 119. **Typicality.** The claims of Ms. Schuman and Mr. Kelley are typical of the
 2 claims of members of the Classes, entities and persons that are similarly affected by
 3 Defendants' wrongful conduct in violation of the laws complained of herein. Plaintiffs
 4 Kim Schuman and Kyle Kelley purchased Duracell or Energizer Battery Products directly
 5 from Walmart during the Relevant Time Period and were injured thereby. Plaintiffs'
 6 injuries are typical of injuries of the members of the Classes, all of whom also purchased
 7 Duracell or Energizer Battery Products directly from Walmart during the Relevant Time
 8 Period.

9 120. The interests of Plaintiffs Schuman and Kelley do not conflict with those of
 10 other members of the Classes.

11 121. **Commonality.** Questions of law and fact common to the members of the
 12 proposed Classes include:

- 13 a. Whether Defendants agreed to the Scheme;
- 14 b. The nature, scope, and extent of the Scheme;
- 15 c. Whether retail competition for sales of Energizer and Duracell
 Battery Products was impaired by the Scheme;
- 16 d. Whether the Scheme violates the Sherman Act or the Cartwright Act
 because it is per se illegal;
- 17 e. Whether the Scheme, in the alternative, is unlawful under the rule of
 reason;
- 18 f. Whether Plaintiff Schuman, Plaintiff Kelley, and Class members were
 injured by the Scheme;
- 19 g. The appropriate measure of classwide damages for each Class; and
- 20 h. Whether the Court should grant injunctive relief to prevent the
 Scheme from recurring, and, if so, what injunctive relief is
 appropriate.

21 122. **Predominance.** The above common issues predominate over any issues
 22 affecting only individual Class members.

123. **Superiority.** A class action is superior to all other available methods for the fair and efficient adjudication of this controversy because joinder of all members of the Classes is impracticable. Furthermore, as the damages suffered by some of the individual Class Members is relatively small, the expense and burden of individual litigation makes it impractical for members of the Classes to redress the wrongs done to them. Litigating hundreds of individual cases also would inevitably lead to inconsistent rulings and results, unnecessarily burden the judicial and legal system, and magnify the delay and expense to all the parties.

X. CAUSES OF ACTION

COUNT I

Violation of Section 1 of the Sherman Act

15 U.S.C. §§ 1, 3

Against All Defendants on Behalf of the National Class

124. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

125. Defendants violated and continue to violate 15 U.S.C. §§ 1 and 3 by entering into, furthering, and enforcing an unreasonable restraint of trade. More specifically, Energizer agreed with Walmart to fix, increase, inflate, or stabilize wholesale prices of Energizer Battery Products (the Scheme).

126. The Scheme stifles intra-brand competition by eliminating price competition from discount retailers, such as Portable Power and other Walmart competitors in the retail market.

127. Defendants' agreement also reduces inter-brand competition between Energizer and Duracell.

128. Defendants' violations of sections 1 and 3 of the Sherman Act are per se illegal because Defendants are horizontal competitors who reached an agreement to fix the wholesale prices of Energizer Battery Products for all direct purchasers from Energizer.

1 129. As Energizer's annual S.E.C. filings acknowledge, one factor that affects
 2 Energizer's ability to compete effectively is the risk that Energizer might "lose market
 3 share to certain retailers . . . which may offer 'private label' brands that are typically
 4 sold at lower prices and compete with the Company's products in certain categories."²
 5 Similarly, Energizer acknowledges that "a move by one or more of our large customers
 6 to sell significant quantities of private label products, which we do not produce on their
 7 behalf and which *directly compete with our products*, could have a material adverse effect
 8 on our business."³

9 130. Walmart was one of these retailers that competed directly and
 10 horizontally with Energizer by offering its own private label brand of Battery Products.

11 131. Therefore, the agreement between Energizer and Walmart to fix and
 12 inflate the prices paid by direct purchasers for Energizer Battery Products was a
 13 horizontal agreement between competitors.

14 132. Defendants' conduct is unlawful under the rule of reason.

15 133. Energizer has market power in a relevant market.

16 134. The market for Battery Products is a relevant antitrust market. Disposable
 17 batteries are distinguished from rechargeable batteries based on technology, and from
 18 specialty batteries due to their specific use in powering household appliances, toys,
 19 flashlights, and other consumer electronic products.

20 135. Energizer has power in the market for Battery Products. Disposable
 21 batteries are distinct from other types of batteries because they power cheaper, smaller
 22 consumer products than rechargeable batteries or other potential substitute products.
 23 Disposable batteries are routinely used in inexpensive toys, key fobs, flashlights, and
 24 calculators.

25 136. Rechargeable or renewable power sources are not substitutes for
 26 disposable batteries because they are used in different devices and are more expensive.

28 2019 Energizer Form 10-K at 7.

3 ³ *Id.* (emphasis added).

1 137. Energizer's power in the market for disposable battery products translates
 2 to power in the market for the lighting products it sells, as the dominant components in
 3 those products are disposable batteries.

4 138. Energizer's market power was enhanced by the Scheme, in that it is an
 5 agreement with the largest retail outlet in the United States, Walmart.

6 139. Walmart has market power in the "brick-and-mortar" retail market, as it is
 7 the largest retailer in the United States.

8 140. Walmart used its market power to cause Energizer to agree to limit price
 9 competition from Energizer's other direct purchasers and to discourage Duracell from
 10 competing with Energizer on wholesale prices.

11 141. There is no pro-competitive justification for the Scheme. For example,
 12 Energizer Battery Products are not specialized products that require retailers to expend
 13 resources to explain their use to consumers or to maintain a skilled sales staff that is
 14 familiar with their products.

15 142. The Scheme violates the rule of reason under a "quick look" analysis
 16 because its anticompetitive effects are plain and obvious.

17 143. The Scheme violates the full-blown rule of reason because the agreement
 18 harms competition without providing any procompetitive benefits.

19 144. As a result of the Scheme, wholesale and retail prices for Energizer and
 20 Duracell Battery Products were inflated above competitive levels in the Relevant
 21 Market.

22 145. As a result of the Scheme, Plaintiff Schuman, Plaintiff Kelley, and National
 23 Class members have been injured in their businesses and property in that they have
 24 paid more for Energizer or Duracell Battery Products than they would have paid in the
 25 absence of the Scheme.

26 146. With respect to the claim under the Sherman Act, Plaintiff Schuman,
 27 Plaintiff Kelley, and National Class members seek injunctive relief, treble damages, and
 28 attorneys' fees and costs.

COUNT II

Violation of California's Cartwright Act

Cal. Bus. & Prof. Code §§ 16720 et seq.

(Vertical Price Fixing)

Against All Defendants on Behalf of the California Class

147. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

148. The Scheme has occurred in substantial part in the State of California, Defendants all reside in the State of California, and Plaintiffs Schuman and Kelley bring this claim for violation of the Cartwright Act on behalf of members of the California Class.

149. Defendants violated and continue to violate the Cartwright Act by entering into, furthering, and enforcing an unreasonable restraint of trade. More specifically, Energizer agreed with Walmart to fix, increase, inflate, or stabilize prices of Energizer Battery Products.

150. The Scheme caused Plaintiff Schuman, Plaintiff Kelley, and California Class members to pay inflated prices for Energizer and Duracell Battery Products on purchases in California.

151. Defendants' conduct is per se unlawful under the Cartwright Act because it involves an agreement to restrain prices.

152. As a result of Defendants' violation of the Cartwright Act, Plaintiff Schuman, Plaintiff Kelley, and California Class members seek treble damages and the costs of suit, including reasonable attorneys' fees. See Cal. Bus. & Prof. Code § 16750(a).

COUNT III

Violation of California's Unfair Competition Law

Cal. Bus. & Prof. Code §§ 17200 et seq.

Against All Defendants on Behalf of the California Class

153. Plaintiffs incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

154. Defendants violated and continue to violate California's Unfair Competition Law, which prohibits unlawful, unfair, and fraudulent business practices.

155. Defendants' practice of artificially inflating wholesale and retail prices of Energizer Battery Products above supra-competitive levels, including through the Scheme, constitutes an unlawful and unfair business practice.

156. Defendants' practice is unlawful in that it violates the Sherman Act, 15 U.S.C. §§ 1 and 3, and California's Cartwright Act, Cal. Bus. & Prof. Code §§ 16720 et seq., as alleged in Counts I and II, above.

157. Defendants' practice is unfair for at least the following reasons:

- a. Defendants' conduct undermines or violates the stated public policies and spirit underlying the Sherman and the Cartwright Acts;
- b. Defendants' conduct is unethical, oppressive, unscrupulous, or substantially injurious to Plaintiffs and the California Class Members; and
- c. The gravity of harm to Plaintiffs and the California Class members from Defendants' practice far outweighs any legitimate utility of that conduct.

158. As a direct and proximate cause of Defendants' conduct, including the Scheme, Plaintiffs and California Class members suffered injury in fact and have lost money or property because they paid artificially inflated, supra-competitive prices to Defendants for Energizer and Duracell Battery Products.

159. Plaintiffs and California Class members are entitled to restitution, injunctive relief, and reasonable attorneys' fees and costs.

160. Injunctive relief is needed because Plaintiffs and many California Class members would like to purchase Energizer Battery Products in the future and would continue to suffer harm in the form of artificially inflated prices unless and until Defendants' unlawful and unfair practices are stopped. Restitution is an incomplete

1 remedy that would only partially address Plaintiffs' and California Class members'
2 grievances.

3 161. Plaintiffs and California Class members lack an adequate remedy at law to
4 redress certain conduct of Defendants' that violates the unfair prong of the UCL.

5 **XI. DEMAND FOR JUDGMENT**

6 WHEREFORE, Plaintiff Schuman, Plaintiff Kelley, and members of the Classes
7 demand judgment against Defendants, as follows:

8 1. Awarding Plaintiff Schuman, Plaintiff Kelley, and members of the Classes
9 treble damages based on the overcharges they paid as a result of the Scheme, in an
10 amount to be proven at trial, including pre- and post-judgment interest at the statutory
11 rates.

12 2. Awarding Plaintiff Schuman, Plaintiff Kelley, and members of the Classes
13 equitable relief in the nature of disgorgement, restitution, and the creation of a
14 constructive trust to remedy Defendants' unjust enrichment.

15 3. Awarding Plaintiff Schuman, Plaintiff Kelley, and members of the Classes
16 their reasonable costs and expenses, including attorneys' fees; and

17 4. Awarding all other legal or equitable relief as the Court deems just and
18 proper.

19 **XII. JURY DEMAND**

20 Plaintiff Schuman, Plaintiff Kelley, and members of the Classes demand a jury trial
21 on all claims so triable under Federal Rule of Civil Procedure Rule 38(b).

22
23 DATED: April 28, 2023

**SCHNEIDER WALLACE
COTTRELL KONECKY LLP**

24
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